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SECOM-D-265
12 August 1977

MEMORANDUM FOR: Acting Deputy to the DCI for the
Intelligence Community

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FROM : [redacted]
Chairman, Security Committee

SUBJECT : Director of Central Intelligence Sensitive
Compartmented Information Security Policy (U)

REFERENCE : Memorandum by [redacted] General Counsel,
dated 11 August 1977

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1. (U) This staff has reviewed the memorandum prepared by [redacted]
[redacted] and the following comments appear to be pertinent:

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a. (C) Paragraph 4 states that "This policy applies on a system-wide, not Agency, basis, and would permit some agencies to continue to increase access levels so long as there was a corresponding decrease elsewhere." Comment: Maybe the DCI's 5 July 1977 memorandum to the A/D/DCI/IC can be interpreted that way, but it suggests that in cases where access approvals will not be offset by commensurate debriefings, special permission can be obtained by the SIO of the Agency involved and the Chairman of the appropriate committee submitting requests to the DCI. This indicates that the policy would be on an agency basis rather than system-wide basis. Even if it were on a system-wide basis, the mechanics of implementation would be next to impossible since there is no central registry in the Community for SI clearances. Clearly then, NSA would then have to query each agency to see if their COMINT totals were falling prior to increasing these levels of access in NSA. The TK access would be easier to manage since they are centrally recorded in CIB. Even then, though, some problems could be caused unless there are very punctual inputs made to the central recording system by all agencies of all their briefings and debriefings. Any lengthy delays would not provide the benefit to NSA that we would be implying if this stabilization were on a system-wide basis. Recommendation: That this sentence in paragraph 4 be omitted and the following substitution be made: "...not be denied, and I have made appropriate provisions to preclude this from happening."

OGC Has Reviewed

SUBJECT: Director of Central Intelligence Sensitive Compartmented Information Security Policy

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b. (U) [] feels that Paragraph 5 of the memorandum is in error with regard to PRM-29 revision of E.O. 11652. The SCC concurred in the PRM-29 ad hoc committee's recommendation that special access programs (i.e., compartments) be continued or established only upon the personal, written approval of a statutory appointee. As the draft of the new order states (Section 6(c)), such programs may only be created or continued "...for matters pertaining to intelligence sources and methods, by the Director of Central Intelligence...." The language of the draft order will clearly authorize the DCI to control compartments, including those for SI, and arrangements for access thereto.

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2. (U) [] has been furnished a copy of memorandum and Security Committee's comments.

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DCI/IC/SECOM [redacted] : 12 Aug 77

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OGC 77-5150
11 August 1977

MEMORANDUM FOR: Acting Deputy to the DCI for the Intelligence Community

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FROM : [REDACTED]
General Counsel

SUBJECT : Director of Central Intelligence Sensitive Compartmented Information Security Policy

1. (C) The Director of Central Intelligence has, by memorandum NFIB-9.2/59, dated 5 July 1977, stated his decision to stabilize throughout the intelligence community the current levels of sensitive compartmented information system access approvals until 1 December 1977. The Director, National Security Agency, has expressed concern that this decision could infringe upon statutory authorities delegated to him by the Secretary of Defense pursuant to P. L. 88-290, and he has, in effect, said that NSA is not subject to the Director's policy. You have asked for an examination of the legal basis for this position. In my opinion the Director, NSA, misinterprets the scope of P. L. 88-290; nevertheless, the existing legal authorities may be insufficient to require NSA to comply with the DCI's policy, for the reasons set forth below.

2. (U) The Director of Central Intelligence is directed under Executive Order 11905 to "ensure the establishment, by the Intelligence Community, of common security standards for managing and handling foreign intelligence systems, information and products, and for granting access thereto." Section 3(d)(1)(x). (Emphasis added). These access requirements have been set forth in DCID 1/14, pursuant to the authorities granted in NSCID No. 1, which provides that the "Director of Central Intelligence shall develop and review security standards and practices as they relate to the protection of intelligence and of intelligence sources and methods from unauthorized disclosure." Section 3(f). While the DCI Security Committee, with the cooperation and assistance of NFIB principals, recommends practical improvements to all compartmentation systems, each department and agency, under NSCID No. 1, must take responsibility for the protection of information within its own organization. Thus, much overall responsibility for handling these systems remains outside the Director's control under NSCID No. 1. It should be noted that the NSCIDs have not yet been revised to incorporate the changes brought by E. O. 11905; therefore, it is difficult to determine the status of these particular provisions. Nevertheless, even after the issuance of E. O. 11905, originating departments have remained final arbiters in compartmentalization.

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3. (U) In addition, the Order requires senior officials of the intelligence community to "protect intelligence and intelligence sources and methods within his department or agency, consistent with policies and guidance of the Director of Central Intelligence." Section 4(a)(8). (Emphasis added.) While this language also may be read to support the DCI's position, the language is sufficiently unclear as to provide support also for the position of the Director, NSA, that the DCI's authorities are not paramount.

4. (U) Language which I believe would clarify the Director's authority might require that the Director "establish procedures" rather than "ensure the establishment of standards." Such amendment would tighten up the gaps left by the existing language. It is possible that our recommendations to this effect in our proposed Executive order on reorganization will be adopted; however, the present problem seems to be of immediate concern, as you are concerned with NSA's compliance at this time.

5. (U) This ability of agencies, not just NSA, to prevent centralization arises in part from section 9 of Executive Order 11652, which permits special departmental arrangements (i.e., compartments) to be established by each agency "with respect to access, distribution and protection of classified information and material, including those which presently relate to communications intelligence, intelligence sources and methods and cryptography." Despite the attempts of the DCI's representatives to centralize control of these arrangements within the intelligence community, the PRM/NSC-29 revision of E. O. 11652 in essence maintains the current system, thus recognizing the autonomy that agencies possess in this regard. This independent authority leads to the conclusion that only through negotiation, and perhaps the strong backing of the President, will a solution be reached, because the legal authorities are not definitive.

6. (C) Similarly, the statutory authorities cited by the Director, NSA are capable of conflicting interpretation, thus are not determinative of the issue. While it is my opinion that the DCI does not by his policy infringe upon statutory authorities, since that statute appears more to be a limitation on access to classified information and not an authority for granting access, the contrary view is also arguable. Here, too, the issue is capable of resolution only through negotiation. One point to be considered in this regard is that the policy applies on a system-wide, not agency, basis; thus, NSA could continue to increase access levels while corresponding decreases are effectuated elsewhere. A tacit agreement to this effect could avoid confrontation.

7. In conclusion, the legal authorities which support the position of the Director are capable of contrary interpretation; thus, while it may be said that the DCI has certain responsibilities, he does not possess the necessary authorities

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in this regard. For your benefit, I have attached a memorandum which may be used as guidance in any response to NSA. I believe this accurately expresses the state of affairs.



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Attachment

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The Director
Central Intelligence Agency

Washington, D.C. 20505

MEMORANDUM FOR: Director of the National Security Agency

SUBJECT : Sensitive Compartmented Information Policy
REFERENCE : NFIB-9.2/59, dated 12 July 1977

1. In your memorandum, Serial: NO859, dated 22 July 1977, you have expressed concern with my policy to stabilize the current levels of SCI access approvals until 1 December 1977. Let me assure you that I do not intend by this policy to interfere with the statutory responsibility set forth in P.L. 88-290 that prohibits employment or access to classified information "unless such employment, detail, assignment, or access to classified information is clearly consistent with the national security." P.L. 88-290, Sec. 301. My intent is simply to formulate measures to prevent both unauthorized disclosures and increased administrative burden. This is fully consistent with the goals of P.L. 88-290, Executive Order 11905, NSCIDs and, more recently, the directive of PRM/NSC-29 which the SCC discussed last week.

2. While each department and agency must take responsibility for the protection of information within its own organization, the DCI Security Committee with the cooperation and assistance of NFIB principals, recommends practical improvements to all compartmentation systems. As you know, I am directed under Executive Order 11905 to "ensure the establishment, by the Intelligence Community, of common security standards for managing and handling foreign intelligence systems, information and products, and for granting access thereto." (Emphasis added). These access requirements have been set forth in DCID 1/14, and are not in issue here. Nor is the issue one of limiting statutory authorities, as I do not read P. L. 88-290 as directing the granting of access; rather, that provision seems more to be a limitation on access to classified information.

3. These matters aside, the recommendations presented to and approved by the SCC on 26 July concerning classification regulations included a requirement that the number of people with access to any special access or compartment programs be reasonable. In keeping with the spirit of this recommendation,

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which is expected to be promulgated in a revised Executive Order 11652, I do not find it unreasonable to stabilize access approvals for the next few months. This period of time will permit a reevaluation of the systems themselves and of the policy and procedures involved in the maintenance of all SCI systems.

4. Finally, there is room for flexibility in this policy, as my memorandum to the AD/DCI/IC indicates. Clearly, essential access should not be denied. Furthermore, this policy applies on a system-wide, not agency, basis, and would permit some agencies to continue to increase access levels so long as there were a corresponding decrease elsewhere. I appreciate your comments and hope I have allayed your fears. I can only repeat that this policy is in no way inconsistent with existing laws. While I am confident that you understand my intent, we can discuss this matter more fully if you wish.

STANSFIELD TURNER

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